



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Major Terrence W. Alligood, USAR

File: B-239275.3

Date: April 1, 1992

DIGEST

Indebtedness resulting from erroneous payments of accrued leave caused by improper separation may be waived pursuant to 10 U.S.C. § 2774 to the extent payments may not be set off against later accrued leave. Request for waiver must be received within 3 years of discovery of overpayment.

DECISION

Major Terrence W. Alligood, United States Army Reserve, requests waiver of a debt resulting from an erroneous payment of 47 days of unused accrued leave incident to his involuntary separation from active duty in 1975. His application for waiver is granted.

On March 6, 1985, the Army Board for Correction of Military Records (ABCMR) found that the 1975 separation was improper and that his records should be corrected to reflect discharge on February 28, 1977. The ABCMR's recommendation was approved by the Secretary of the Army on March 20, 1985, and this action was upheld by the Court of Claims in 1987.¹

On August 28, 1989, the United States Finance and Accounting Center (now Defense Finance and Accounting Service-Indianapolis Center), proposed a settlement to Major Alligood in consequence of the actions of the ABCMR and Claims Court. That proposal, which was drafted on August 25, 1989, contained the first definite determination by an appropriate official that a debt resulted from the erroneous payment of unused accrued leave incident to Major Alligood's improper separation. Major Alligood objected to the proposed settlement, and in February 1990, the file was forwarded to our Claims Group for settlement.

In our decision Major Terrence W. Alligood, USAR, B-239275, Feb. 19, 1991, we held, among other things, that leave payments from improper separations are erroneous and must be recouped. However, we stated that a member may request

¹See Alligood v. United States, 14 Cl. Ct. 11 (1987).

waiver under 10 U.S.C. § 2774 to the extent that leave is actually lost due to the 60-day carry-over limit in 10 U.S.C. § 701(b). Section 2774 of title 10, U.S. Code requires that a request for waiver of an erroneous payment be received within 3 years of the date the erroneous payment was discovered.

In his request for waiver of his indebtedness Major Alligood stated that he lost 47 days of leave due to the statutory carry-over limit. The Defense Finance and Accounting Service agrees with Major Alligood's assessment that he lost 47 days due to the leave carry-over limitation.

The application for waiver was received within 3 years of the discovery of the debt, and granting it is consistent with our holdings in Major Terrence W. Alligood, USAR, B-239275, supra and 57 Comp. Gen. 554, 561 (1978).

Therefore, a waiver of 47 days of accrued leave is granted, and the Defense Finance and Accounting Service may make payment as proposed in its administrative report if otherwise proper.


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General Counsel